

CCASE:

SOL (MSHA) V. DIXIE FUEL

DDATE:

19860114

TTEXT:

Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
PETITIONER

CIVIL PENALTY PROCEEDING

Docket No. KENT 85-124  
A.C. No. 15-00590-03527

v.

No. 1 Mine

DIXIE FUEL COMPANY,  
RESPONDENT

DECISION AND ORDER APPROVING SETTLEMENT

Appearances: Thomas A. Grooms, Esq., Office of the Solicitor,  
U.S. Department of Labor, Nashville, Tennessee,  
for Petitioner; William A. Rice, Esq., Harlan,  
Kentucky, for Respondent.

Before: Judge Broderick

The above case was called for hearing pursuant to notice on December 17, 1985 in Pineville, Kentucky. At the opening of the hearing, counsel made a motion on the record for the approval of a settlement agreement reached by the parties.

The case involves two citations, one for an alleged violation of the ventilation standard, originally assessed at \$400.00, the other for an alleged violation of the roof control plan originally assessed at \$10,000.00. The agreement proposes to settle for payment of \$400.00 and \$7500.00 for the violations.

The operator operates two mines which in 1983 produced 223,504 tons of coal and in 1984 242,784 tons. There were 9 prior violations of 30 C.F.R. 75.316, and 27 prior violations of 30 C.F.R. 75.200.

The ventilation violation alleged that the air had dropped below the required 9000 cubic feet per minute at the last open crosscut. Less than one tenth of one percent methane was present. Because the operator could not determine the reason for the air loss after diligent effort, the area was abandoned.

The roof control violation was extremely serious. It resulted in one fatal injury, and 3 other nonfatal injuries.

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The citation charged that while advancing toward the outcrop, subnormal roof conditions were encountered and a sufficient number of additional roof supports were not installed to adequately support the roof. Respondent's history of prior roof control violations is not good and includes another fatal roof fall in May, 1983. The mine in question has been closed, having been operated for only two weeks in 1985.

As part of the settlement agreement, Respondent has agreed to make available to all miners in its two mines a copy of the approved roof control plan. It has further agreed that all the miners up to and including section foremen will attend a training class in roof control to be conducted by MSHA at its Harlan, Kentucky office. The class will be held on company time, that is, the miners will be paid at their regular rates of pay for attending the class.

I have carefully considered the settlement agreement in the light of the criteria in section 110(i) of the Act, and conclude that it should be approved.

Therefore, IT IS ORDERED that the settlement agreement proposed on the record December 17, 1985 is APPROVED;

IT IS FURTHER ORDERED that Respondent shall make available to each of its miner-employees a copy of the current approved roof control plan.

IT IS FURTHER ORDERED that all of Respondent's miner-employees, up to and including section foremen, shall attend a roof control class at the MSHA office in Harlan, Kentucky and they shall be paid by Respondent at their regular rates of pay. This class shall be held on or before February 7, 1986.

IT IS FURTHER ORDERED that Respondent shall pay the sum of \$7900.00 within 30 days after the roof control class referred to above is held, and subject to the payment and the other conditions set out above being fulfilled, this proceeding is DISMISSED.

James A. Broderick  
Administrative Law Judge